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Teo Cheng Hua v Ker Min Choo & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02(IM)-512–03 OF 2014
ZAWAWI SALLEH, IDRUS HARUN AND BADARIAH SAHAMID JJCA
2 JUNE 2015

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Civil Procedure — Contempt of court — Interference with due administration of justice — Filing of second Form 75 under s 281 of Companies Act 1965 and second statutory declaration by liquidator — Allegations that first Form 75 altered — Whether there were valid reasons — Whether amounted to tampering with documentary evidence — Whether constituted contempt of court

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When Jotang Wires & Cables Sdn Bhd, ('the company') was wound up, the appellant, acting as the liquidator, filed a suit on behalf of the company against the first and second respondents ('the applicants'). The suit was struck out by the High Court and this prompted the applicants to remove the appellant as

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the liquidator of the company ('the removal application') and the application was allowed. The High Court judge, inter alia, found that the appellant had changed Form 75 which he had earlier lodged with the Registrar of Companies ('the ROC') pursuant to s 281 of the Companies Act 1965 ('the Act'), which was considered a grave misconduct and was tantamount to an interference with

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the ongoing court proceedings and was possibly contemptuous. The affidavit in support of the application for leave under O 52 r 4 of the Rules of Court 2012 showed that the applicants had stated that the appellant had filed Form 75 ('the first Form 75') with a statutory declaration ('the first statutory declaration') with the ROC. However, in reply to the applicants'

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affidavit-in-support, the appellant affirmed an affidavit wherein the appellant had exhibited a completely different Form 75 ('the second Form 75'). The High Court judge held that the appellant had committed contempt of court by interfering in the proper administration of justice that had resulted in a real risk of prejudice to a fair and proper adjudication of the proceedings. Therefore, the

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appellant was found guilty and sentenced to a fine of RM50,000, in default, 50 days imprisonment. In the present appeal, the appellant submitted that some one and a half years after the filing of the first statutory declaration, he had discovered that the first statutory declaration verifying the liquidator's account covering the period from 29 March 2011 until 20 September 2011 was actually

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a mistake and accordingly lodged the second Form 75 with the accompanying second statutory declaration.

Held, dismissing the appeal with costs of RM10,000:

(1) The appellant had possession of all the books of the company. It would be logical to infer that the appellant would not have attested to the truth of the account in the first Form 75 if he had considered it as unacceptable. The appellant failed to offer some semblance of credible explanations as to why he altered the figures in the amended second Form 75 and did not acknowledge the payments and receipts which he had earlier acknowledged in the first Form 75. There could not be two versions of 'a full and true account' in both differing first and second statutory declarations (see paras 23–24).

(2) There was a gap of one and a half years after the first Form 75 was filed when the appellant lodged the second Form 75. As a qualified and reputable chartered accountant and the approved liquidator of the company, it was unthinkable that the appellant would have made the alleged errors and allowed the first Form 75 with such alleged attendant errors to remain lodged with the ROC in that state for a long period of time. The alterations, which were made one month after the applicants' supporting affidavit in the removal application, would clearly and not unfathomable to suggest that the appellant did so to thwart the removal application filed by the applicants and would only lead to an irresistible conclusion that the appellant had tampered with the documentary evidence in an attempt to pervert the administration of justice (see paras 18–19).

(3) The first Form 75 and statutory declaration was material as well as an important documentary evidence in the applicants' removal application. The conduct of the appellant in tampering with material documentary evidence clearly amounted to an interference with the due administration of justice and constituted contempt of court. The appellant had not just acted in a manner which was likely to interfere with the proper administration of justice but had actually directly interfered with it by the positive act of amending the first Form 75 by way of lodging the second Form 75 and affirming the second statutory declaration (see paras 20 & 25–26).

(4) The amendment of the first Form 75 by way of the lodgement of the second Form 75 and the second statutory declaration without good and credible reasons was, beyond any argument, sufficiently serious and connected to the removal application proceedings. Though mens rea was not a necessary element for contempt, there was clear mens rea in the conduct of the appellant in lodging the second Form 75 and second statutory declaration. The conduct of the appellant in the whole episode constituted contempt of court (see paras 29–30).

A **[Bahasa Malaysia summary**

Apabila Jotang Wires & Cables Sdn Bhd, ('syarikat') digulung, perayu, bertindak sebagai likuidator, memfailkan tindakan bagi pihak syarikat terhadap responden pertama dan kedua ('pemohon-pemohon'). Tindakan tersebut dibatalkan oleh Mahkamah Tinggi dan ini membuatkan pemohon-pemohon menyingkirkan perayu sebagai likuidator syarikat ('permohonan penyingkiran') dan permohonan dibenarkan. Hakim Mahkamah Tinggi, antara lain, mendapati bahawa perayu telah menukarkan Borang 75 yang mana dia masukkan dengan Pendaftar Syarikat-Syarikat ('PS') berikutan s 281 Akta Syarikat 1965 ('Akta'), yang dipertimbangkan sebagai salah laku serius dan sama seperti campur tangan dengan prosiding mahkamah yang sedang berjalan dan kemungkinan adalah menghina. Afidavit sokongan permohonan untuk izin di bawah A 52 k 4 Kaedah-Kaedah Mahkamah 2012 menunjukkan bahawa pemohon-pemohon telah menyatakan bahawa perayu telah memfailkan Borang 75 ('Borang 75 pertama') dengan perisytiharan statutori ('perisytiharan statutori pertama') dengan PS. Walau bagaimanapun, untuk menjawab kepada afidavit sokongan pemohon-pemohon, perayu mengesahkan afidavit di mana perayu telah melampirkan Borang 75 yang berbeza sama sekali ('Borang 75 kedua'). Hakim Mahkamah Tinggi memutuskan bahawa perayu telah melakukan penghinaan mahkamah dengan campur tangan dalam pentadbiran keadilan yang telah mengakibatkan risiko prejudis sebenar kepada penghakiman yang adil dan betul terhadap prosiding. Oleh itu, perayu didapati bersalah dan dihukum denda sebanyak RM50,000, jika ingkar, 50 hari penjara. Dalam rayuan ini, perayu berhujah bahawa lebih kurang setahun setengah selepas memfailkan perisytiharan statutori pertama, dia mendapati bahawa perisytiharan statutori pertama yang mengesahkan akaun likuidator menjangkau tempoh dari 29 Mac 2011 sehingga 20 September 2011 sebenarnya adalah kesilapan dan dengan itu memasukkan Borang 75 kedua bersama perisytiharan statutori kedua.

Diputuskan, menolak rayuan dengan kos sebanyak RM10,000:

(1) Perayu telah dalam milikan kesemua buku syarikat. Ia adalah logik untuk membuat kesmipulan bahawa perayu tidak akan mengakui kepada kebenaran akaun dalam Borang 75 pertama jika dia telah mempertimbangkan ia sebagai tidak boleh diterima. Perayu gagal untuk memberikan tanggapan penjelasan yang boleh dipercayai mengapa dia telah mengubah angka-angka dalam Borang 75 kedua yang dipindakan dan tidak mengakui bayaran dan resit yang dia telah akui sebelumnya di dalam Borang 75 pertama. Tidak patut terdapat dua versi *a full and true account* dalam kedua-dua yang membezakan perisytiharan statutori pertama dan kedua (lihat perenggan 23–24).

(2) Terdapat jarak satu tahun setengah selepas Borang 75 pertama difailkan apabila perayu memasukkan Borang 75 kedua. Sebagai akauntan

berkanun yang berkelayakan dan berwibawa dan likuidator syarikat yang diluluskan, adalah mustahil untuk perayu membuat kesilapan seperti didakwa dan membenarkan Borang 75 pertama dengan kesilapan yang mengiring untuk kekal dimasukkan dengan PS dalam keadaan sedemikian bagi tempoh masa yang lama. Pengubahan, yang dibuat sebulan selepas afidavit sokongan pemohon-pemohon dalam permohonan penyingkiran, akan jelas dan tidak dapat diduga untuk mencadangkan bahawa perayu berbuat sedemikian untuk menggagalkan permohonan penyingkiran yang difailkan oleh pemohon-pemohon dan akan hanya membawa kepada kesimpulan yang tidak dapat ditahan bahawa perayu telah mengusik keterangan dokumentar dan percubaan untuk mengganggu pentadbiran keadilan (lihat perenggan 18–19).

(3) Borang 75 pertama dan perisytiharan statutori adalah material dan juga sebagai keterangan dokumentar penting dalam permohonan penyingkiran pemohon-pemohon. Tingkah laku perayu dalam mengusik keterangan dokumentar penting jelas merupakan campur tangan dengan pentadbiran keadilan yang wajar dan membentuk penghinaan mahkamah. Perayu bukan sahaja bertindak dalam cara yang mungkin untuk campur tangan dengan pentadbiran keadilan yang wajar tetapi sebenarnya campur tangan secara terus dengannya melalui tindakan positif meminda Borang 75 pertama melalui kemasukan Borang 75 kedua dan mengesahkan perisytiharan statutori kedua tersebut (lihat perenggan 20 & 25–26).

(4) Pindaan terhadap Borang 75 pertama melalui kemasukan Borang 75 kedua dan perisytiharan statutori kedua tanpa alasan kukuh dan boleh dipercayai, adalah melampuai apa-apa hujahan, cukup serius dan berkaitan kepada penyingkiran prosiding permohonan. Walaupun mens rea bukan unsur perlu untuk penghinaan, terdapat mens rea jelas dalam tingkah laku perayu dalam memasukkan Borang 75 kedua dan perisytiharan statutori kedua. Tingkah laku perayu dalam keseluruhan episod membentuk penghinaan mahkamah (lihat perenggan 29–30).]]]

Notes

For a case on interference with due administration of justice, see 2 *Mallal's Digest* (5th Ed, 2015 Reissue) para 2310.

Cases referred to

Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim &Ors [2012] 3 MLJ 458, FC (refd)

Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd [2002] 4 MLJ 241, FC (refd)

Murray Hiebert v Chandra Sri Ram [1999] 4 MLJ 321, CA (refd)

Tiong Cheng Peng & Anor v Ker Min Choo & Ors [2014] 9 MLJ 311, HC (refd)

Legislation referred to

Companies Act 1965 ss 232(1), 281, 364(2), Form 75
Penal Code s 3
Rules of Court 2012 O 52 rr 3, 4
Statutory Declarations Act 1960

Appeal from: Originating Petition No 26–4 of 2008 (4) (High Court, Johor Bahru)

NG Vinod (Mohd Sofian Shamsudin with him) (Tam Cheng Yau & Co) for the appellant.
Justin Voon Tiam Yu (Yoong How Vey and Ryan Chu Soon Wei with him) (Moi, NK Koh & Chee) for the respondent.

Idrus Harun JCA:

INTRODUCTION

[1] The appeal in the present instance arose out of the decision of the High Court on 16 February 2014 and 19 February 2014 allowing the first and second respondents' ('the applicants') application to commit the appellant for contempt of court emerging from certain evidence given by the appellant at the proceedings for his removal as a liquidator which disclosed alterations of a sworn statement given by the appellant in a document submitted to the Registrar of Companies.

BACKGROUND OF CASE

[2] On 29 March 2011, Jotang Wires & Cables Sdn Bhd ('the company') was wound up pursuant to a court order made by consent of the parties and the appellant at that point of time was appointed the liquidator of the company. The petitioners, namely Tiong Cheng Peng and Liew Yen Sin, were the minority shareholders of the company.

[3] The applicants were the directors and shareholders of the company before it was wound up. They were also named as the first and second respondents in the petition to wind up the company.

[4] The events which ultimately culminated in the contempt proceedings began with the filing of a Civil Suit No 22 NCvC-113-03 of 2012 ('the suit') by the appellant on behalf of the company on 26 March 2012 against the applicants claiming the sum of RM1,132,686.49. The claim was premised principally on the wrongful payments of the said sum which the appellant alleged the applicants had caused the company to make between 29 March

2011 to 27 May 2011 after the winding up of the company which were deemed to be dispositions of property and therefore were unlawful under the Companies Act 1965. The suit however was struck out by the learned High Court judge on 25 March 2013 on the basis that the appellant had failed to comply with an 'unless order' by the court and the failure to fulfil an undertaking made by the appellant's solicitors.

[5] On 17 April 2013, in the aftermath of the proceedings of the suit, the applicants by way of Originating Petition No 26–4 year 2008 sought to remove the appellant as the liquidator for the company ('the removal application').

[6] The grounds relied on in the removal application essentially were that the appellant had failed to discharge his duties as the liquidator for the company bona fide in the interest of all the relevant parties. He had, it was alleged, placed himself in a position of serious conflict of interest by acting in a biased and partial manner in favour of the petitioners. The application was allowed by the court in accordance with s 232(1) of the Companies Act 1965 on 26 September 2013 and pursuant thereto the appellant was removed as the liquidator of the company.

[7] The decision of the High Court in respect of the removal application is reported in *Tiong Cheng Peng & Anor v Ker Min Choo & Ors* [2014] 9 MLJ 311 and is noteworthy for its relevance to the instant appeal. The appellant, we observe, was removed as the liquidator for the company on the grounds of misconduct, failure to act impartially and acting in a biased manner. The learned judge, inter alia, found that the appellant had changed Form 75 which he had earlier lodged with the Registrar of Companies pursuant to s 281 of the Companies Act 1965 in the course of litigation. The appellant's conduct in altering the statutory Form 75, according to the learned judge, could be considered serious and grave misconduct and tantamount to interference with ongoing court proceedings and was possibly contemptuous. We reproduce below the relevant excerpts from the learned judge's judgment for the removal application:

> [19] It is important to note that the Form 75 contains a declaration on oath by the deponent affirmed before a commissioner of oaths attesting categorically to the truth of the statement. The time periods and figures had been changed in the second Form 75 significantly, rendering it impossible for both statements to be true and correct. In effect, Teo had inexplicably changed his position and no longer acknowledged payments and receipts for the period '29 March 2011–9 May 2011' which amounted to the most substantial sums. The inordinate delay in making the alterations some one and a half years later and its timing after this application was filed raised grave doubts as to the bona fide of Teo's act which was alleged to be an afterthought.
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> [20] The gravity and seriousness of making a false statement on oath cannot be

A overstated. The entire credibility of Teo was called into question. He had failed in his duty to disclose all material facts in a frank, candid and honest manner. His sworn statement which was subsequently altered, showed a propensity for not disclosing the whole truth even on oath and instead, making false statements to circumvent proceedings commenced by the applicants.

B CONCLUSION

[21] To sum up, upon consideration of all the facts and evidence and the chronology of events as alluded to, I found that the applicants had made out a prima facie case of misconduct against the liquidator ('Teo') in the discharge of his fiduciary duties to the seventh respondent company and all its contributories.

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[24] Teo's conduct in altering the statutory Form 75 to suit his own ends could be considered serious and grave misconduct that caused loss of trust and confidence in his integrity. It was no less than tampering with an official statement given on oath to the registrar of companies, Teo had sworn to the truth and correctness to the statement which he decided to inexplicably alter some one and a half years later. It was also tantamount to interference with ongoing court proceedings and was, possibly, contemptuous.

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E **[8]** The appellant appealed against the above decision but the appeal was in due course withdrawn.

[9] From the record of appeal and as clearly manifested in the above decision, the application for an order of committal against the appellant pursuant to O 52 r 4 of the Rules of Court 2012 emanated from the course papers which were filed for the removal application involving the appellant as the liquidator for the company. The application was founded on the applicants' interest in the affairs of the company, being the directors, shareholders and contributories thereof.

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[10] The facts gleaned from the applicants' statement and the affidavit in support of the application for leave pursuant to O 52 r 3 of the Rules of Court 2012 explicitly showed that the applicants had affirmed their affidavit in support of the removal application dated 16 April 2013 stating that the appellant had filed Form 75 (the first Form 75) with the Registrar of Companies. The first Form 75 contained matters in relation to the liquidator's account of receipts and payments and statement of the position in the winding up of the company which according to the applicants in their affidavit in support was clear in substance that the alleged payments made after the winding up action of the company had already been recognised by the appellant as valid and proper receipts and payments. It is essential to mention that an integral part to the first Form 75 is a statutory declaration (the first statutory declaration) which the appellant was statutorily required to affirm under s 281 of the Companies Act 1965 and which he had in fact affirmed on

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21 November 2011 verifying on oath that the account of receipts and payments contained a full and true account of the appellant's receipts and payments in the winding up of that company from 29 March 2011 to 29 September 2011.

[11] However, in reply to the applicants' affidavit-in-support, the appellant affirmed an affidavit on 29 May 2013 wherein the appellant had exhibited a completely different Form 75 (the second Form 75) showing significant increase in the figures on total payments and receipts covering the same period from 29 March 2011 to 29 September 2011 which the appellant did by preparing two separate accounts of receipts and payments between 29 March 2011 until 9 May 2011 and 10 May 2011 until 29 September 2011. It is important to note that though the accounts had also covered the period between 29 March 2011 to 9 May 2011, the statutory declaration dated 23 May 2013 (the second statutory declaration) disclosed that the appellant acknowledged only the receipts and payments covering a shorter period from 10 May 2011 to 29 September 2011 by attesting to the truth thereof.

[12] This sudden turn of event had led the applicants to make the application for an order of committal against the appellant based on the grounds, inter alia, that:

(a) the appellant had tampered with the documentary evidence during the course of litigation;

(b) the appellant made false statements under oath; and/or

(c) the appellant intentionally tried to confuse the court and interfere with the administration of justice by changing the figures in the first Form 75 whilst litigation was under way.

THE HIGH COURT DECISION

[13] The learned judge found that the appellant had proved beyond reasonable doubt that the appellant had committed contempt of court by interfering in the proper administration of justice that had resulted in a real risk of prejudice to a fair and proper adjudication of the proceedings. His Lordship accordingly found the appellant guilty and after a plea in mitigation, sentenced him to a fine of RM50,000 in default 50 days imprisonment.

SUMMARY OF GROUNDS OF APPEAL RAISED BY THE APPELLANT

[14] We were pressed with the argument urged for the appellant that the second statutory declaration was filed by the appellant some one and the half years after the first statutory declaration was filed on 21 November 2011 when he had discovered circa 2013 that the first statutory declaration verifying the

liquidator's account covering the period from 29 March 2011 until 20 September 2011 was actually a mistake. According to learned counsel, this was due to the fact that the appellant had indeed taken charge as the liquidator for the company effective 10 May 2011, hence he could only verify the liquidator's account covering the period from 10 May 2011 until 29 September 2011. The appellant accordingly lodged the second Form 75 with the accompanying second statutory declaration. It was further contended that the appellant only discovered the said 'genuine mistakes' a year and a half after the first statutory declaration was filed, adding that it was so discovered after the applicants had filed the removal application. However, the appellant strenuously denied that the second declaration had something to do and was in connection with the filing of the removal application. On the other hand, it was submitted, the appellant was under a duty in law to do so, and if we understand him correctly, if he failed to do so it would entail liability against him under s 364(2) of the Companies Act 1965 for making a false or misleading statement in any material particular in any report, return or other document.The appellant's counsel had also contended that the applicants had to show evidence that the alterations which were made in the second Form 75 was indeed wrong and thus justifying the committal order against the appellant.

DECISION

[15] In his affidavit in reply in respect of the committal application affirmed on 31 December 2013, the appellant, as regards the first Form 75, averred that there were mistakes in the accounts filed vide the said first Form 75. However, it is significant to note that the appellant did not specify in the said affidavit what these mistakes were. It was learned counsel's statement in his written submission, which was not pleaded in the affidavit in reply affirmed on 31 December 2013, that the mistake was due to the fact that the appellant had taken charge of the company on 10 May 2011 and as such he could verify the liquidator's account only from 10 May 2011 until 29 September 2011.

[16] Upon perusal of the record of appeal we came across the appellant's affidavit in reply affirmed on 29 May 2013 with respect to the removal application,wherein it was stated that he had filed an amended liquidator's accounts in the second Form 75 to separate the receipts and payments made before 11 May 2011 and those after 11 May 2011 as the previous liquidator's accounts in the first Form 75 filed with the Registrar of Companies did not separate the receipts and payments during and after the said date. An important point worthy of mention at this stage is that nowhere in the said affidavit was any positive averment made by the appellant that the first statutory declaration was a mistake.

[17] Our careful scrutiny of both Form 75 disclosed that the figures had

indeed been changed in the second Form 75 showing a remarkable increase in the figures on total payments and receipts in the accounts covering both periods between 29 March 2011 until 9 May 2011 and between 10 May 2011 until 29 September 2011. It maybe recalled that both Forms 75 contained statutory declarations in which the appellant had attested to the truth of the accounts of his receipts and payments and the statement of the position of the company in the winding up. Thus, it might be apposite at this stage to consider what this situation had inevitably entailed. In our judgment, the appellant's sharp and sudden vicissitudes of his stand in the second Form 75, accompanied with his declaration on oath in the second statutory declaration attesting to the truth of the account of his receipts and payments covering only the period from 10 May 2011 to 29 September 2011, in effect showed that the appellant no longer acknowledged the payments and receipts for the period from 29 March 2011 to 29 May 2011 which he had earlier acknowledged on oath in the first Form 75, and had in consequence, rendered it impossible to now tell which of his statements was true.

[18] There is moreover the gap of one and a half years after the first Form 75 was filed when the appellant lodged the second Form 75 on 28 May 2013. It would not thus be an exaggeration to say that the appellant was indeed in a deep long slumber for one and a half years before he suddenly woke up and rather unexpectedly, had shifted his position by filing the second Form 75. The long delay certainly could not support as genuine correction of the account especially when it was made in the wake of the removal application that would determine his fate as the liquidator of the company. As a qualified and reputable chartered accountant and the approved liquidator of the company, it is unthinkable that the appellant would have made the alleged errors and allowed the first Form 75 with such alleged attendant errors to remain lodged with the Registrar of Companies in that state for a long period of time.

[19] It seems too much of a coincidence and indeed appears unlikely that it happened by chance for this court to accept the appellant's act in filing the alterations in the second Form 75 as a bona fide one. The alterations, we observe, made one month after the applicants' supporting affidavit in the removal application, would clearly and not unfathomable to suggest, that the appellant did so to thwart the removal application filed by the applicants and would only lead to an irresistible conclusion that the appellant had tampered with the documentary evidence in an attempt to pervert the administration of justice.

[20] The first Form 75 and statutory declaration was a material as well as an important documentary evidence in the applicants' removal application. We should say that in the context of s 281 of the Companies Act 1965 under which Form 75 is mandatorily required to be lodged by a liquidator with the Registrar

of Companies, the form is an important statutory instrument by which the liquidator is made to declare as true an account of his receipts of any money and payments that he has made, including any dividend paid to creditors as well as any amount he has invested. The statutory declaration that the appellant had made in this regard is governed by the Statutory Declarations Act 1960 and needless to say that making a false statutory declaration is, by virtue of s 3 thereof, an offence punishable under the Penal Code. The appellant as an approved liquidator would have been fully aware of his obligation to ensure the accuracy and correctness of his verification in the first statutory declaration in the first Form 75.

[21] In his letter to the Registrar of Companies dated 28 May 2013, the appellant claimed that the new statutory declaration verifying the liquidator's account could only be for the period from 10 May 2011 to 29 September 2011 the former date according to him being the date he took charge of the company. We should say on this point that as the court appointed him as the liquidator for the company on 29 March 2011, his appointment became effective from this date and therefore he had access to all the previous books of the company. In fact the company was effectively in liquidation from 29 March 2011 when the court ordered for it to be wound up. He subsequently lodged the first Form 75 and the statutory declaration on 21 November 2011 which was seven and a half months after his appointment as the company's liquidator.

[22] The appellant would not have been in a position to lodge the first Form 75 if he did not have access to all the previous books of the company. In fact the appellant by his own admission in his affidavit in reply dated 29 May 2013 stated that the applicants had submitted the company's statement of affairs on 27 June 2011. It is somewhat strange that if the reason which he gave in his letter to the Registrar of Companies was true, obviously he could have prepared the first Form 75 verifying the liquidator's account from 10 May 2011 to 29 September 2011 as it was lodged on 21 November 2011 which was six months after 10 May 2011, the date he allegedly took charge of the company and about four months after he received the statement of affairs. He had ample time to do so. Instead, he lodged the first Form 75 attesting to the truth of the account of his receipts and payments covering the period from the date the company was wound up which was 29 March 2011 until 29 September 2011. Mindful of his professional background and the fact that he had possession of all books of the company, it would be logical to infer that he would not have attested to the truth of the account in the first Form 75 if he considered it unacceptable. He moreover meekly explained in his affidavit in reply in this committal application as to why he lodged the second Form 75 in which the figures of total receipts and payments for the period from 29 March 2011 to 29 September 2011 were altered stating that it was so altered in order to correct the errors that had occurred.

[23] On a critical examination of the various affidavits and documentary exhibits in the record of appeal and viewed objectively, the logical and inevitable conclusion which can be drawn therefrom is that the appellant failed to offer some semblance of credible explanations as to why he altered the figures in the amended second Form 75 and did not acknowledge the payments and receipts from 29 March 2011 to 9 May 2011 which he earlier acknowledged in the first Form 75.

[24] Without doubt, there cannot be two versions of 'a full and true account' in both differing first and second statutory declarations.

[25] The conduct of the appellant in tampering with material documentary evidence before the court, in our judgment, clearly amounted to an interference with the due administration of justice and constituted contempt of court. We wish to express our understanding of the law of contempt of court in that primarily for there to be an interference with the administration of justice, only a likelihood of such interference would suffice. The Court of Appeal decision in the case of *Murray Hiebert v Chandra Sri Ram* [1999] 4 MLJ 321 on the correct test for contempt of court held:

> To constitute contempt of court, it is not necessary to prove affirmatively that there had been an actual interference with the administration of justice by reason of offending statements. It is enough if it is likely or it tends in any way to interfere with the proper administration if justice (per Dua CJ in *Brig ET Sen (Retd) v Edatata Narayanan & Ors* 1969 AIR Delhi 201).

[26] The appellant in this regard had not just acted in a manner which was likely to interfere with the proper administration of justice but had actually directly interfered with it by the positive act of amending the first Form 75 by way of lodging the second Form 75 and affirming the second statutory declaration (see *Monatech* case).

[27] We are entirely in agreement with the learned judge when His Lordship held:

> ... To reiterate, TCH (the respondent) had tampered with or manipulated documentary evidence by altering the Form 75 after a lapse of more than a year and coincidentally, in a matter of a month or so after the OS for his removal was filed with the supporting affidavit exhibiting the Form 75 that he had originally lodged with the ROC affirming ... to be true and correct. In his affidavit in opposition, which exhibited the substantially altered Form 75 which was also affirmed on oath to be truth TCH had not proffered any reasonable or credible explanation for the highly questionable and suspicious act done at this crucial stage in the midst of proceedings affecting his position as liquidator. The coincidence, viewed objectively, was too striking glaring to be accepted as bona fide and unintentional ...
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> The original statements were plainly material evidence before the court in the

A pending litigation. From the circumstances, the only inescapable and irresistible conclusion that can be drawn was that the act complained of was done with the intention of influencing the outcome of litigation and calculated to have that effect. So was the fact that it was likely or tended any way to interfere with the proper administration of justice, therefore, constituted contempt of court.

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[28] It is clear in the authorities that the circumstances and categories of facts which may constitute contempt of court are never closed and the scope for development is limitless (see *Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd* [2002] 4 MLJ 241). But in order for an act to amount to a contempt of court C the alleged contemptuous act must be sufficiently serious and connected with the proceedings in question. The Federal Court in the case of *Monatech* held:

The Court of Appeal in finding of the facts of the case that there was commission of contempt of court relied on what Lloyd LJ in *Attorney General v Newspaper* D *Publishing Plc*, inter alia said at p 378: The act must be sufficiently serious and sufficiently closely connected with the particular proceedings.

[29] The amendment of the first Form 75 by way of the lodgement of the second Form 75 and the second statutory declaration without good and E credible reasons was beyond any argument sufficiently serious and connected to the removal application proceedings. We have absolutely no hesitation in finding that this was indeed an interference with the administration of justice warranting a committal order. Though mens rea is not a necessary element for contempt, (*Murray Hiebert v Chandra Sri Ram* [1999] 4 MLJ 321), we are F satisfied that there was clear mens rea in the conduct of the appellant in lodging the second Form 75 and the second statutory declaration.

[30] The conduct of the appellant in the whole episode constituted G contempt of court. In the case of Tan Sri *Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim &Ors* [2012] 3 MLJ 458 the Federal Court adopted the definition of contempt in *Oswald's Contempt of Court* when it held in the judgment of Tun Arifin Zakaria CJ as follows:

... *Oswald's Contempt of Court* (2nd Ed), at p 6 gives a general definition of H contempt of court as follows:

To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnessed during litigation.

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CONCLUSION

[31] In the premises and for the reasons discussed, the circumstances of the case point to the inevitable conclusion that the appellant had in fact committed

a contempt of court. The learned judge correctly decided that the applicants had proved beyond reasonable doubt that the appellant had committed contempt of court by interfering in the administration of justice. As regards the sentence, we were satisfied that the sentence meted out by the learned judge was not perverse or wrong. We accordingly dismissed the appeal, affirmed the decision of, and sentence imposed by, the learned judge. We ordered cost of RM10,000 to the respondent and deposit to be refunded to the appellant.

Appeal dismissed with cost of RM10,000.

Reported by Afiq Mohamad Noor